

REMARKS

This paper is being filed in response to the Office Action mailed July 18, 2007. Claims 1-81 were pending in the application, with claims 1-69 and 77 being rejected, and claims 70-76 and 78-81 being withdrawn from consideration.

The present application includes embodiments of an interspinous process and sacrum implant. The implants include a brace that is attached to base or body. The brace includes a spacer and a beam. The base is constructed to be mounted to one vertebra, and the brace is movably attached to the base to be positioned such that the spacer contacts a second vertebra. Support for this construction is found throughout the specification and drawings. The claims have been amended to include this nomenclature.

Claims 7-9, 13-26, 30-43, 47-58, 61-69, and 77 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,415,659 (hereinafter Lee). Lee discloses a pedicle clamp that includes three hooks that act in concert to releasably attach to a selected vertebra of a patient's spine. A first hook 24 extends outward from a main body, with hooks 30, 50 being movably attached to the main body. A connector 70 is attached to a back side of the hooks by a pair of screws to connect the three hooks 24, 30, 50 together. As illustrated in Fig. 8, two separate pedicle clamps may be connected together with a spinal plate 90. The spinal plate 90 includes an elongated shape with longitudinal slots that receive screws that extend outward from the clamps.

Claim 7 has been amended to now include the brace has a first surface that faces towards the base and a second surface that faces away from the base. The thickness of the brace measured between these surfaces is greater at the first end than the second end. In rejecting claims 7 and 8, the Office Action on page 5 cites the connector 70 of Lee as the brace (previously referred to as the spacer). Further, page 6 of the Office Action cites the top portion of the connector 70 as the first end. As illustrated in the figures, the connector 70

includes a substantially constant thickness throughout and does not disclose the first end having a greater thickness than the second end. For at least this reason, independent claim 7 and dependent claim 8 are not anticipated by Lee and are in condition for allowance.

Claim 9 has been amended to now include that the brace includes an elongated shape with a major axis and a minor axis. A distal end of the brace that is aligned on the major axis is adapted to contact the spinous process. The Office Action on page 4 identifies the spinal plate 90 of Lee as the brace (previously the beam). The spinal plate 90 includes an elongated shape with a major axis and a minor axis. The spinal plate is positioned on a lateral side of the spinous process such that a distal end on the major axis does not contact the spinous process. For at least this reason, independent claim 9 and dependent claims 13-18 and 20-24 are not anticipated by Lee and are in condition for allowance. Claims 19 and 25 have been canceled.

Claim 26 has been amended to now include that the brace includes a distal end and an elongated section that extends outward from the distal end and is secured to the body. The distal end includes a greater thickness than the elongated section. The spinal plate 90 of Lee cited in the Office Action includes a distal end that extends upward beyond the upper aperture 92, and an elongated section that extends outward from the distal end and is secured to the body. However, the distal end of the spinal plate 90 does not include a greater thickness than the elongated section. For at least this reason, independent claim 26 and dependent claims 30-42 are not anticipated by Lee and are in condition for allowance.

Claim 43 has been amended to now include the body with a superior-most edge. The claim is also amended to include that the device can locate the curved surface of the distal end of the brace outward beyond the superior-most edge of the body to contact the second vertebra. Page 4 of the Office Action cites the spinal plate 90 of Lee as the brace (previously the beam), and the first hook main body 22 as the body. Further, page 9 of the Office Action cites the upper end of the spinal plate as the distal end. However, the distal end of the spinal plate 90

does not extend outwardly beyond a superior-most edge of the body 22 to contact a second vertebra. Figure 8 appears to disclose the best view of the positioning between these members. It does not appear that the distal end extends outward beyond the superior-most edge of the body.

Claim 43 also now requires that the curved surface of the distal end extends outward to contact a second vertebra. The spinal plate 90 of Lee is positioned along a lateral side of the spinous process, and outward from the remainder of the vertebra. This positions the curved surface of the distal end away from the vertebra. It does not appear that the curved distal end can contact the vertebra as is now required in claim 43. For at least these reasons, independent claim 43 and dependent claims 47-57 are not anticipated by Lee and are in condition for allowance.

Claim 58 has been amended to now include the first end of the brace extends beyond the body such that a mid-point of the first end contacts against the spinous process of the second vertebra. The spinal plate 90 of Lee cited as the brace (previously the beam) is positioned along a lateral side of the spinous process. The first end of the plate is positioned away from the spinous process. It does not appear that the mid-point of the first end can contact against the spinous process of the second vertebra as is now required in claim 58. For at least these reasons, independent claim 58 and dependent claims 61-64 and 66-69 are not anticipated by Lee and are in condition for allowance. Claim 65 has been canceled.

Claim 77 has been amended to now include a brace that extends from the body and has a distal end with a curved surface with a first thickness and a beam with a smaller second thickness. Further, the claim has been amended to include a device that connects the beam to the body. The spinal plate 90 of Lee cited in the Office Action as the brace (previously the spacer) includes a distal end with a curved surface and a beam. However, the spinal plate includes a constant thickness throughout, and does not include the distal end with a greater

thickness. For at least these reasons, claim 77 is not anticipated by Lee and is in condition for allowance.

Claims 1-6, 10-12, 27-29, 44-46, and 59-60 were rejected under 35 USC 103(a) as being unpatentable over Lee. Claim 1 has been amended to now include the first end of the spacer that contacts the first vertebra includes a greater thickness than the beam. The spinal plate 90 of Lee includes a constant thickness along its length. There is no teaching that the spinal plate should have other isolated thicknesses, particularly at one end. For at least this reason, independent claim 1 and dependent claims 2-6 are not obvious in view of Lee and are in condition for allowance.

Claims 10-12 are not made obvious in view of Lee for at least the reasons stated above for independent claim 9.

Claims 27-29 are not made obvious in view of Lee for at least the reasons stated above for independent claim 26.

Claims 44-46 are not made obvious in view of Lee for at least the reasons stated above for independent claim 43.

Claims 59-60 are not made obvious in view of Lee for at least the reasons stated above for independent claim 58.

The Abstract was objected to for various reasons. A new Abstract has been included in this Response.

The Declaration was considered defective because it failed to state that the Applicant acknowledges his duty to disclose all information known to be material to "patentability." The declaration in the present application includes the following: "I acknowledge the duty to disclose information which is material to the examination of the application in accordance with Title 37, Code of Federal Regulations, §1.56." Section 1.56 of Title 37 of the Code of Federal Regulations is entitled "Duty to disclose information material to **patentability**" (emphasis

added). Therefore, the declaration in the present application that states the Applicant acknowledges his duty to disclose information in accordance with this section in essence includes the disclosure of information that may be material to patentability. The mere lack of the term "patentability" does not make the declaration defective.

In view of the above remarks, the Applicant submits the application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'D. Kalish', written over a horizontal line.

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